

**OIL REFINERY INDUSTRY
(ANGLO-IRANIAN OIL
COMPANY LIMITED).**

No. 80 of 1985.

AN ACT to amend the Oil Refinery Industry (Anglo-Iranian Oil Company Limited) Act 1952.

[Assented to 4 December 1985.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Oil Refinery Industry (Anglo-Iranian Oil Company Limited) Amendment Act 1985*.

Short title
and principal
Act.

(2) In this Act the Oil Refinery Industry (Anglo-Iranian Oil Company Limited) Act 1952 is referred to as the principal Act.

Act No. 1
of 1952 as
amended by
Acts Nos. 22
of 1956 and 44
of 1959.

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Commence-
ment.

2. This Act shall come into operation on the day on which it is assented to by the Governor.

Section 1
amended.

3. Section 1 of the principal Act is amended by deleting "*Oil Refinery Industry (Anglo-Iranian Oil Company Limited) Act, 1952*" and substituting the following—

" *Oil Refinery (Kwinana) Agreement Act 1952* ".

Section 2
amended.

4. Section 2 of the principal Act is amended—

(a) by deleting the full-stop after the definition of "refinery" and "refinery site" and substituting a semi-colon; and

(b) by inserting the following definition—

" "the variation agreement" means the agreement of which a copy is set forth in Schedule 2. "

Section 3
amended.

5. Section 3 of the principal Act is amended in subsection (1) by deleting "the Schedule" and substituting the following—

" Schedule 1 ".

Section 3C
inserted.

6. After section 3B of the principal Act the following section is inserted—

Variation
agreement.

" 3C. (1) The variation agreement is approved and ratified.

(2) The implementation of the variation agreement is authorized.

(3) Without limiting or otherwise affecting the application of the Government Agreements Act 1979, the variation agreement shall operate and take effect notwithstanding any other Act or law. "

7. The heading to the Schedule to the principal Act is deleted and the following heading is substituted—

Heading to
Schedule
substituted.

“ SCHEDULE 1 ”.

8. After Schedule 1 to the principal Act the following Schedule is added—

Schedule 2
added.

“ SCHEDULE 2. Section 3C

THIS AGREEMENT is made the 21st day of October, 1985 BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part AND BP REFINERY (KWINANA) PROPRIETARY LIMITED a company incorporated in the State of Western Australia and having its registered office at Mason Road, Kwinana (hereinafter called “the Company” in which term shall be included its successors and permitted assigns) of the other part.

WHEREAS:

- (a) the State and the Company (pursuant to assignment) are now the parties to the agreement dated the 3rd day of March 1952 which is scheduled to the Oil Refinery Industry (Anglo-Iranian Oil Company Limited) Act 1952;
- (b) the said agreement has been varied from time to time in accordance with its provisions by agreements respectively dated the 10th day of November 1953, the 23rd day of November 1953, the 10th day of September 1954, the 22nd day of December 1955, the 1st day of June 1956, the 3rd day of October 1956, the 26th day of March 1959, the 1st day of June 1962, the 8th day of April 1965, the 4th day of October 1965 and the 19th day of November 1975 and as so varied is hereinafter referred to as “the Principal Agreement”;
- (c) the parties desire to vary the Principal Agreement.

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NOW THIS AGREEMENT WITNESSETH:

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.

2. The provisions of this Agreement shall not come into operation until a Bill to approve and ratify this Agreement is passed by the Legislature of the said State and comes into operation as an Act.

3. The Principal Agreement is hereby varied as follows:

(1) Clause 1—

(a) by inserting before the definition of “commencing date” the following definition—

“ “bulk cargo” means any quantity of petroleum or other bulk materials being materials for the construction operation and maintenance of the refinery or being surplus materials from the refinery or being such other materials as the Minister after consultation with the Fremantle Port Authority may from time to time approve for the purposes of this definition; ”;

(b) by deleting the full stop in the definition of “refinery site” and inserting therein after “hereof” the following—

“ less any part or parts thereof sold by the Company; ”;

(c) by inserting after the definition of “refinery site” the following definition—

“ “tonne” has the same meaning as it has in and for the purposes of regulations under the Fremantle Port Authority Act 1902. ”.

(2) Clause 3—

(a) subclause (f)—

by inserting after “this Agreement”, where it first occurs, the following—

“ up to and including the year ending the 30th day of June, 1984 ”;

(b) by inserting after subclause (j) the following subclauses—

“ (k) on and after the 1st day of July, 1984 pay to the Fremantle Port Authority in relation to any cargo described in clause 4, subclause (s) hereof which is discharged upon or over or shipped from or over the wharves, jetties, landing places or berths referred to in clause 3, subclause (b) hereof wharfage charges as follows—

(i) on all inward and outward bulk cargoes at the rate of 10.94 cents per tonne PROVIDED THAT upon any alteration after the 1st day of July, 1984 in the Fremantle Port Authority's general cargo Inner Harbour rate for wharfage on non-containerised inward goods for which other specific rates are not provided (hereinafter called “the basic rate”) the rate shall increase or decrease proportionately to the alteration in the basic rate;

(ii) on all other inward and outward cargoes a sum equal to 25 per centum of the appropriate prescribed general cargo non-containerised rates from time to time applicable to Fremantle Port Authority Inner Harbour cargoes (which rates as at the 1st July, 1984 were \$3 per tonne for inward cargoes and \$2 per tonne for outward cargoes);

PROVIDED THAT at the end of June in the year 1989 and each fifth year thereafter the said base figure of 10.94 cents (or such other base figure as may have been substituted therefor by virtue of this proviso) shall be reviewed and if during the period from the 1st day of July five years prior thereto the amounts payable by the Company under paragraph (i) of this subclause have on average increased at a rate

greater than CCI (as hereinafter defined) has on average increased (measured by the CCI figure for the end of the preceding March in each case), the said base figure to apply from the next succeeding 1st day of July shall be reduced so far as necessary to ensure that the amount payable by the Company as at that 1st day of July equals the amount which would have been payable at that date if during the preceding five year period the amounts payable under paragraph (i) of this subclause had on average increased at the same rate as CCI has on average increased in that period AND for the purposes of this proviso "CCI" means the weighted average of:

The index for Western Australia contained in the Average Weekly Earnings States and Australia Index published by the Australian Bureau of Statistics in Catalogue Number 6302.0 as to sixty per centum; and The index for Perth contained in the Price Index of Materials used in Building other than House Building Six State Capitals and Darwin published by the Australian Bureau of Statistics in Catalogue Number 6407.0 as to forty per centum;

PROVIDED FURTHER THAT if on any occasion one of those indices ceases to be published, becomes immutable or has its reference base changed so that it becomes inappropriate for the purposes of the foregoing proviso, it shall be substituted by such other appropriate index as the parties hereto agree or failing agreement as determined by arbitration hereunder;

- (1) keep the Minister fully informed in respect of, and when and in such form as required by the Minister from time to time report to the Minister on, the measures it has taken and is taking for the monitoring, protection and management of the environment including

without limiting the generality of the foregoing provisions with respect to the following matters arising from the operations of the Company at the refinery site—

- (i) emissions and discharges into Cockburn Sound from the refinery site, the wharves, jetties, landing places and berths referred to in clause 3, subclause (b) hereof and vessels in the vicinity of any thereof;
- (ii) emissions, discharges and disposals of matter onto or into land at or in the vicinity of the refinery site;
- (iii) emissions and discharges into the air in the vicinity thereof;
and
- (iv) disciplinary action taken against the Company in respect of environmental matters during the period in respect of which the report is made

and as and when required by the Minister the Company shall liaise and co-operate with the Minister on measures it is taking and take additional reasonable measures with respect to the monitoring, protection and management of the environment arising from the operation of the refinery;

- (m) without prejudice to any obligation of the Company to comply with the regulations under the Fremantle Port Authority Act 1902, during such time as a jetty superintendent of the Fremantle Port Authority is not present at the wharves, jetties, landing places or berths referred to in clause 3, subclause (b) hereof, use all reasonable endeavours to ensure compliance by third parties with part IV section V (as amended or replaced from time to time) of the said regulations. ”.

(3) Clause 4—

(a) subclause (a)—

by deleting “-1950,”;

(b) subclause (d)—

by deleting “-1950,”;

(c) subclause (h)—

(i) by deleting “the Fremantle Tramways and Electric Lighting Act, 1903-1946, or any other” and substituting “any”;

(ii) by deleting “State Electricity Commission” and substituting “State Energy Commission”;

(iii) by deleting “12,000 kilowatts” and substituting “such amount as may be agreed from time to time between the Company and the Commission”;

(d) subclause (k)—

by deleting “-1951”;

(e) subclause (n)—

(i) paragraph (v)—

(A) by deleting “State Housing Act 1946-1954” and substituting “Housing Act 1980”;

(B) subparagraph (a)—

by deleting “a “worker”” and substituting “an “eligible person””;

(C) subparagraph (b)—

by deleting “of the amount of Two Thousand Five Hundred Pounds (L2,500) for advances to a worker” and substituting “provided in section 40 of that Act as to the amount which may be lent to an eligible person”;

(ii) paragraph (vi)—

by deleting “-1950,”;

(f) subclause (o)—

by deleting “-1951”;

(g) subclause (p)—

by deleting “-1950,”;

(h) by deleting subclause (r) and substituting the following—

“ (r) without prejudice to any terms and conditions agreed with the Fremantle Port Authority under clause 4, subclause(s) hereof, ensure that no charges are levied by the State, the Fremantle Port Authority, the Department of Marine and Harbours or by any other State instrumentality in respect of any vessel using the wharves, jetties, landing places and berths referred to in clause 3, subclause (b) hereof (except for services actually rendered at the request of that vessel) other than—

(i) tonnage rates from time to time levied by the Fremantle Port Authority for the Port of Fremantle on the tonnage of vessels ascertained pursuant to the Fremantle Port Authority Act 1902;

(ii) the charges from time to time prevailing made by the Fremantle Port Authority in respect of pilotage services ordered by or rendered to or in respect of any vessel in accordance with the Fremantle Port Authority Act 1902;

(iii) the usual charges from time to time prevailing made by the Fremantle Port Authority in respect of any other port service rendered to or in respect of any vessel by the Fremantle Port Authority; and

(iv) the usual conservancy dues from time to time prevailing made by the Department of Marine and Harbours; ”;

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(i) subclause(s)—

(i) by deleting “allow the Company” and substituting the following—

“subject to the payment by the Company of charges and dues pursuant to clause 3, subclause (k), allow the Company”;

(ii) by deleting “Fremantle Harbour Trust Commissioners” and substituting “Fremantle Port Authority”;

(j) by inserting after subclause (u) the following subclause—

“ (ua) except as provided by this Agreement not impose, permit or authorise any of its agencies or instrumentalities or any local or other authority to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of the Company in the conduct of its business hereunder nor take or permit to be taken by any such State authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted or intended to be granted under this Agreement. ”.

(4) Clause 5—

(a) subclause (d)—

by deleting “-1950,”;

(b) subclause (k)—

by inserting after “shares”, where it first occurs, the following—

“ or to a company which is related (within the meaning of that term as used in section 7 of the Companies (Western Australia) Code) to the Company ”;

(c) subclause (m)—

by deleting “Fremantle Harbour Trust Act, 1902-1951” and substituting “Fremantle Port Authority Act 1902”;

(d) subclause (s)—

(i) by deleting “the Premier, the Minister for Works, or the Director of Works for the time being of the State,” and substituting the following—

“ the Minister in the Government of the State for the time being responsible for the administration of this Agreement and its ratifying Act, ”

(ii) by deleting “the Premier, Minister for Works, or Director of Works of the State” and substituting “the said Minister”;

(e) subclause (t)—

(i) by deleting “that this Agreement” and substituting the following—

“ (i) that, subject to paragraph (ii) of this subclause, this Agreement ”;

(ii) by inserting the following paragraph—

“ (ii) that if the Company desires at any time to close down for a period greater than 12 months the operations of the refinery it shall give to the State at least 6 months’ prior notice in writing of the date on which it is to close down those operations. At the expiration of the period of any such notice this Agreement shall (unless the parties otherwise agree) cease and determine. During the period of any such notice, and if so required by the State and notwithstanding any determination of this Agreement for a further six months following the expiration of that period, the Company shall co-operate with the State for the purpose of ensuring that the continued supply and distribution of petroleum within Western Australia is not adversely affected; ”;

(f) subclause (u)—

(i) paragraph (iii)—

by deleting "Licensing Act, 1911-1952," and substituting "Liquor Act 1970";

(ii) paragraph (iv)—

(A) by deleting "Licensing Act, 1911-1952," where it first occurs and substituting "Liquor Act 1970";

(B) subparagraph (b)—

by deleting "Licensing Act, 1911-1952, for the purposes of the provisions of sections 141, 142, 146, 147 and Part X" and substituting "Liquor Act 1970 for the purposes of the provisions of sections 126 and 127";

(g) subclause (v)—

(i) paragraph (i)—

(A) by deleting "Fremantle Harbour Trust Act, 1902-1952," and substituting "Fremantle Port Authority Act 1902";

(B) by deleting "Fremantle Harbour Trust Commissioners" and substituting "Fremantle Port Authority";

(C) by deleting "said Commissioners" and substituting "said Authority";

(D) by deleting "-1950,";

(ii) paragraph (ii)—

(A) by deleting "Fremantle Harbour Trust Commissioners" and substituting "Fremantle Port Authority";

(B) by deleting "the Commissioners" and substituting "the Authority";

(iii) paragraph (iii)—

by deleting “Fremantle Harbour Trust Commissioners” and substituting “Fremantle Port Authority”;

(h) by inserting after subclause (v) the following subclauses—

“ (w) that save as provided in clause 3, subclause (k) hereof no other charges or dues (except for services actually rendered at the request of the Company) shall be levied by the State, the Fremantle Port Authority or any other authority of the State on and after the 1st day of July 1984 upon the Company in respect of the inward or outward cargoes described in clause 4, subclause (s) hereof discharged upon or over or shipped from the wharves, jetties, landing places or berths referred to in clause 3, subclause (b) hereof;

(x) (i) that if the Company at any time during the continuance of this Agreement desires to significantly modify, expand or otherwise vary its activities carried on pursuant to this Agreement or desires to carry on operations other than the refining of petroleum it shall give notice of such desire to the Minister and if required by the Minister within 2 months of the giving of such notice, shall submit to the Minister (within such period as the Minister shall reasonably allow) to the fullest extent reasonably practicable detailed proposals in respect of all matters covered by such notice and other relevant information as the Minister may reasonably require;

(ii) if the Minister does not require the Company to submit proposals under paragraph (i) of this subclause, the Company may, subject to compliance with all applicable laws, proceed with the modification, expansion or variation of its activities carried on pursuant to this Agreement;

(iii) on receipt of proposals pursuant to paragraph (i) of this subclause the Minister shall—

(A) approve of the said proposals either wholly or in part without qualification or reservation; or

(B) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of any matters (in addition to those required to be addressed pursuant to paragraph (i) of this subclause) which the Minister reasonably requires to be covered by the said proposals; or

(C) require as a condition precedent to the giving of his approval to the said proposals that the Company make such alteration thereto or comply with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such alteration or conditions;

(iv) the Minister shall within two months after receipt of proposals pursuant to paragraph (iii) of this subclause give notice to the Company of his decision in respect to the same;

- (v) if the decision of the Minister is as mentioned in either of subparagraphs (B) or (C) of paragraph (iii) of this subclause the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter;
- (vi) if the decision of the Minister is as mentioned in either of subparagraphs (B) or (C) of paragraph (iii) of this subclause, the Company may within 2 months after receipt of the notice mentioned in paragraph (iv) of this subclause—
 - (A) if the Company considers that the decision is unreasonable, elect to refer to arbitration in the manner hereinbefore provided the question of the reasonableness of the decision;
 - or
 - (B) advise the Minister that the Company does not wish to proceed with the matters the subject of the said proposals whereupon the said proposals shall lapse;
- (vii) the Company shall implement the decision of the Minister or an award made on an arbitration as the case may be in accordance with the terms thereof;
- (y) that nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities hereunder that may be made by the State or by any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act from time to time in force. ”.

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4. The parties hereto acknowledge that having regard to the amendments pursuant to this Agreement to clause 4, subclause (r) of the Principal Agreement, the agreement dated the 3rd day of October 1956 referred to in recital (b) to this Agreement is no longer in force.

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by the said THE
HONOURABLE BRIAN
THOMAS BURKE, M.L.A. in
the presence of:

BRIAN BURKE

DAVID PARKER
MINISTER FOR MINERALS
AND ENERGY

THE COMMON SEAL OF BP
REFINERY (KWINANA)
PROPRIETARY LIMITED
was hereunto affixed by
authority of the Directors in
the presence of:

[C.S.]

Director: BRUCE SELIGMANN.

Secretary: MICHAEL R. BEER.